

REMARKS

Claims 1-10 and 21-25 are currently pending. Claims 11-20 are withdrawn from consideration as being directed to non-elected inventions. In the Final Office Action of July 7, 2003, the Examiner made the following disposition:

- A.) Rejected claims 1-10 and 21-25 under 35 U.S.C. §112, second paragraph.
- B.) Rejected claims 1-8 and 21-24 under 35 U.S.C. §102(b) as being anticipated by *Valyi*.
- C.) Rejected claims 9 and 25 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Fortuna*.
- D.) Rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Edwards*.

Applicants respectfully traverse the rejections and address the Examiner's disposition as follows:

- A.) Rejection of claims 1-10 and 21-25 under 35 U.S.C. §112, second paragraph:

Independent claims 1, 24 and 25 have been amended as per the Examiner's request to overcome the rejection.

Claims 2-10 and 21-23 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

- B.) Rejection of claims 1-8 and 21-24 under 35 U.S.C. §102(b) as being anticipated by *Valyi*:

Applicants respectfully disagree with the rejection.

Applicants' independent claims 1 and 24, each as amended, each claim a plastic molded container comprising a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom. The sidewall comprises a lower frustum section, a narrow mid-section, and an upper frustum section. The sidewall has curvilinear transitions from the upper frustum section to the narrow mid-section and from the narrow mid-section to the lower frustum section. The lower frustum section has a volume larger than a volume of the upper frustum section. The container is constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process.

This is clearly unlike *Valyi*, which fails to even disclose a bowl. Referring to *Valyi* Figure 5, *Valyi* discloses a bottle having a top portion that narrows to a neck portion. The neck

portion's opening is substantially smaller than the width of the top portion of the bottle. Therefore, it is clear that *Valyi's* container is bottle and not a bowl. Thus, for at least this reason, *Valyi* fails to disclose or even suggest Applicant's claims 1 or 24.

Further, unlike Applicants' claims 1 and 24, *Valyi's* container does not have a lower portion having a greater volume than an upper portion. Instead, *Valyi's* container has a lower portion with a volume that is less than its upper portion's volume. As shown in *Valyi* Figure 5, the upper and lower portions of *Valyi's* container are somewhat mirror images of each other, with the upper portion having a larger volume due to the sidewall's transition into the neck portion. Thus, *Valyi's* container does not have a lower portion with a volume that is less than its upper portion's volume. Accordingly, for at least this additional reason, *Valyi* fails to disclose or even suggest Applicants' claims 1 and 24.

Applicants' claims 1 and 24 each claim a lower frustum section has a volume larger than a volume of the upper frustum section. This beneficially prevents the Applicants' container from damage during the high temperature and pressures of a retort process. *Valyi's* container, on the other hand, fails to disclose such a structure, and would therefore not perform as well under retort conditions. In fact, *Valyi* does not disclose that its container can be used under retort conditions, but instead discloses that its container can be used merely with high temperatures.

Claims 2-8 and 221-23 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

C.) Rejection of claims 9 and 25 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Fortuna*:

Applicants respectfully disagree with the rejection.

Applicants' claim 1 is allowable over *Valyi* as described above. *Fortuna* still fails to disclose or suggest a bowl having a lower frustum section that has a volume larger than a volume of an upper frustum section. Instead, *Fortuna* clearly teaches a bowl having a lower frustum section that has a volume smaller than a volume of its upper frustum section. Therefore, *Valyi* in view of *Fortuna* still fails to disclose or suggest claim 1. Claim 9 depends directly or indirectly from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable.

Similar to claim 1, claim 25 as amended also claims a bowl having a lower frustum section that has a volume larger than a volume of an upper frustum section. Therefore, *Valyi* in view of *Fortuna* also fails to disclose or suggest Applicants' claim 25.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

D.) Rejection of claim 10 under 35 U.S.C. §103(a) as being unpatentable over *Valyi* in view of *Edwards*:

Applicants respectfully disagree with the rejection.


Applicants' claim 1 is allowable over *Valyi* as described above. *Edwards* still fails to disclose or suggest a bowl having a lower frustum section that has a volume larger than a volume of an upper frustum section. Instead, *Edwards* clearly teaches a bowl having a lower frustum section that has a volume smaller than a volume of its upper frustum section. Therefore, *Valyi* in view of *Edwards* still fails to disclose or suggest claim 1. Claim 10 depends directly or indirectly from claim 1 and is therefore allowable for at least the same reasons that claim 1 is allowable.

Applicants respectfully submit the rejection has been overcome and request that it be withdrawn.

CONCLUSION

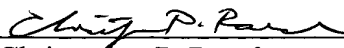
In view of the foregoing, it is submitted that claims 1-10 and 21-25 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

 (Reg. No. 45,034)
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